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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,760	08/06/2003	Jim Dehart	742436-19	3821

22204 7590 10/27/2004

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EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 10/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,760

Applicant(s)

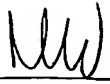
DEHART, JIM

Examiner

Raymond W. Addie

Art Unit

3671



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-10 and 20-29 is/are pending in the application.
- 4a) Of the above claim(s) 21-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-10 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 21-29 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claim 21 requires additional structure, in the form of "a pivoting section positioned on an opposing portion of said upright section"; which was not originally claimed, and introduces an additional limitation which was not contemplated in the originally claimed invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 21-29 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Specification

2. The disclosure is objected to because of the following informalities:

Page 8, ln. 7, the phrase "beinterconnect with"; should be --be interconnected with--.

Appropriate correction is required.

Claim Objections

3. Claim 1 is objected to because of the following informalities:

Claim 1, ln. 9, the phrase "width each of said plates"; should be --width of each of said plates--. Appropriate correction is required.

Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In this case, claim 9 recites "one interconnecting member is adapted to secure the plurality of inverted T-shaped plates a predetermined separating distance" is already provided for in Claim 1, which defines the spacing between T-shaped plates as "a spacing between each of said respective plates is greater than the width (of) each of said plates".

Therefore, it does not appear as though Claim 9 further limits the spacing between plates as provided for in Claim 1.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 9, 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kirk # 2,774,323.

Kirk discloses a vehicle barrier comprising:

A plurality of inverted T-shaped plates (22/24) having a height, width and depth.

At least one interconnecting member (10) adapted to interconnect the plurality of inverted T-shaped plates, wherein the inverted T-shaped plates are configured to engage a ground surface to at least partially immobilize a vehicle, said interconnecting member (10) having a length greater than the width of said plates, wherein a spacing between each of said respective plates is greater than the width of each of said plates. Further wherein each of said plurality of plates includes a top portion (24) and a lower portion (22) defining two feet. See Figs. 1, 3, 5; cols. 1-2.

In regards to Claims 2, 3, 5 Kirk discloses the top portion (24) and at least one of the two feet, of at least one of the inverted T-shaped plates cooperate to at least partially immobilize a vehicle; and that the top portion and the at least two feet of the T-shaped plate are squared off and flat. See Fig. 1; col. 2, lns. 42-48.

In regards to Claim 4 Kirk discloses the interconnecting member can be in the form of a bar (10) or (14). See Figs. 1-5, 8, 9.

In regards to Claims 9, 10 Kirk discloses the at least one interconnecting member is adapted to secure the plurality of T-shaped plates a predetermined separating distance. Further Kirk illustrates in Figs. 1, 7 the plurality of inverted interconnected T-shaped plates form a wall-shaped structure. See col. 2, Ins. 12-15.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-6, 9, 10, 20 rejected under 35 U.S.C. 102(a) as being anticipated by Carter # 6,517,280 B2.

Carter discloses a vehicle barrier comprising:

A plurality of inverted T-shaped plates (20) having a height, width and depth.

At least two interconnecting members (36, 38, 46) adapted to interconnect the plurality of inverted T-shaped plates, wherein the inverted T-shaped plates are configured to engage a ground surface to at least partially immobilize a vehicle, said interconnecting members (36, 38, 46) having a length greater than the width of said plates,

wherein a spacing between each of said respective plates is greater than the width of each of said plates.

Further wherein each of said plurality of plates includes a top portion (22) and a lower portion (24) defining two feet. See Figs. 1, 9, 13, 14; col. 1, Ins. 33-53.

In regards to Claims 2, 3, 5 Carter discloses the top portion (22) and at least one of the two feet, of at least one of the inverted T-shaped plates cooperate to restrict access to a restricted area. Although Carter does not explicitly recite at least partially immobilizing a vehicle; Carter does disclose the base can be filled with ballast material to increase the weight of the barrier and would inherently be able, when properly weighted to at least partially immobilized a vehicle. Carter further discloses that the top portion (24) is spiked as at (54) and the at least two feet of the T-shaped plate is flat. See Fig. 1; col. 2, Ins. 33-49.

In regards to Claims 4, 6 Carter discloses the interconnecting member can be in the form of a bar (46), such that the barrier assembly is adapted to be detachably interconnected with one or more additional barriers, in order to prevent people and machinery, such as vehicles, out of a restricted area . See Figs. 1, 9; col. 4, Ins. 38-53.

In regards to Claim 8 Carter discloses a securing mechanism (54) adapted to secure at least one of a pedestrian barrier and a sign. See Fig. 9.

In regards to Claims 9, 10 Carter discloses the at least one interconnecting member is adapted to secure the plurality of T-shaped plates a predetermined separating distance; in order to form a wall-shaped structure. See Fig. 9.

Response to Amendment

6. The amendments to Claims 1, 20 requiring "said length of said interconnecting member(s) being greater than the width of said T-shaped member have necessitated a new search of the prior art, which has provided the New Grounds of Rejection, put forth above.

Further, Applicant is reminded that when claims are canceled, only the claim number and status indicator "(canceled)" should be listed and not the language of the canceled claim.

Response to Arguments

7. Applicant's arguments with respect to claims 1-6, 8-10, 20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Spaugh # 4,542,709 discloses a highway warning device. Kulp et al. # 6,659,681 B2 discloses a barrier system. Rand # 1,833,124 discloses a T-shaped traffic sign.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3671

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 703 305-0135. The examiner can normally be reached on 8-2PM, 6-8 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Thomas Will
Supervisory Patent Examiner
Group 3600

RWA
10/21/04